**Healthcare in Indian**

**№1**

**Forensic medicine and medical jurisprudence**

 Human culture is built upon the formulation of values that form the basis of an ethical society, honesty, integrity, respect, pursuit of excellence, civic duty, accountability and loyalty. Since the dawn of civilization, by trial or error, it has become established that a society and more so it’s medical profession, a public oriented and noble profession, can survive and thrive only by observance and practice of certain rules of conduct guided by ethical, moral, legal and social values of land.

Healthcare in Indian features a universal healthcare care system run by the constituent states and territories. The constitution charges every state with ‘raising the level of nutrition and the standard of living of its people and improvement of public health as among its primary duties.

**№2 Lecture overwiew**

**№3**

The are two distinct aspects of law-medicine relationship:

1. Forensic medicine, and
2. Medical jurisprudence.

The are essentially subjects, but are closely related.

Lets try to learn some terms( definitions):

What is the difference between forensic medicine and medical jurisprudence? Forensic Medicine mostly relates to the case in hand. Like the cause of death, circumstantial evidence etc. Medical Jurisprudence is the legal aspect of it.

**№4 Medical law** is the branch of law which governs the prerogatives and responsibilities of medical professionals and the rights of the patients. Medical law is different from medical jurisprudence. The main branches of medical law includes:

1.law on confidentiality,

2.law on negligence and torts in relation to medical treatment,

3.criminal law in the field of medical practice and treatment.

Medical law addresses a number of important ethical questions. These include questions as to the nature, quality and duration of life. These questions have come before the courts recently with regard to euthanasia, reproductive technology and sterilization of non-competent patients.

**№5**

**Healthcare in Indian** features a universal healthcare care system run by the constituent states and territories. The constitution charges every state with ‘raising the level of nutrition and the standard of living of its people and improvement of public health as among its primary duties. Law is an obligation on the part of society imposed by the competent authority, and noncompliance may lead to punishment in the form of monetary fine or imprisonment or both.

In a survey conducted at Mumbai, eight out of 10 doctors feel that the laws that govern the practice of healthcare in India are outdated and even higher majority feels that there are too many laws and licences that are required to keep their practice going. A survey among 297 doctors across specializations says that there are about 50 different laws that govern the practice of healthcare in India. The study conducted by Medscape India, a nonprofit trust of doctors, revealed that 78% of doctors feel that many of the laws that govern medical practice are outdated. Licences have to be procured by doctors running a hospital every year.

**№6 №7 The classification**

**№8**

**Laws governing the commissioning** of hospital are the laws to ensure that the hospital facilities are created after due process of registration, the facilities created are safe for the public using them, have at least the minimum essential infrastructure for the type and volume of workload anticipated and are subject to periodic inspections to ensure compliance. There are other laws pertaining to governing to the qualification/practice and conduct of professionals, sale, storage of drugs and safe medication, management of patients, environmental safety, employment and management of manpower, medicolegal aspects and laws pertaining to safety of patients, public and staff within the hospital premises. There are laws governing professional training and research, business aspects, licences/certifications required for hospitals, etc. A hospital administrator should be aware about all these laws, regulations, policies, procedures, reports and returns and keep abreast with the latest amendments to be on the safe side of law and provide quality care to the patients.

**Prerequisites of Medical Practice**

A duly qualified medical professional, i.e. a doctor has a right to seek to practice medicine, surgery and dentistry by registering himself with the medical council of the state of which he is resident, by following the procedure as prescribed under the medical act of the state.

The state medical council has the power to warn, refuse to register/remove from the name of a doctor who has been sentenced by any court for any nonbailable offence or found to be guilty of infamous conduct in any professional respect. The state medical council has also the power to re-enter the name of the doctor in the register.

The provision regarding offences and professional misconduct which may be brought before the appropriate medical council (state/medical Council of India) have been stated in the Indian Medical council (Professional conduct, etiquette and ethics) Regulation 2002. No action against a medical practitioner can be taken unless an opportunity has been given to him to be heard in person or through an advocate.

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**№9**

**Laws Governing to the Qualification/Practice and Conduct of Professionals**

These are the regulations to ensure that staff employed in the hospital for delivery of healthcare are qualified and authorised to perform certain specified technical jobs within specified limits of competence and in accordance with standard codes of conduct and ethics, their credential are verifiable from the registering councils and in case of any professional misconduct the councils can take appropriate action against them. These laws are listed in Table 1 and 2.

№10 **Laws Governing to Sale, Storage of Drugs and Safe Medication**

These are laws to control the usage of drugs, chemicals, blood, blood products, prevent misuse of dangerous drugs, regulate the sale of drugs through licences, prevent adulteration of drugs and provide for punitive action against the offenders. These are listed in Table 3.

№11 **Laws Governing Management of Patients**

These are the laws for setting standards and norms for conduct of medical professional practice, regulating/ prohibiting performance of certain procedure, prevention

of unfair practices and control of public health problems/ epidemic disease. They deals with the management of emergencies, medicolegal cases and all aspects related there to including dying declaration, and conduct of autopsy and the types of professional negligence. These laws are listed in Table 4.

№12 **Laws Governing Environmental Safety**

These are the laws aimed at protection of environment through prevention of air, water, surface, noise pollution and punishment of offenders. These laws are listed in Table 5.

№13,14 **Laws Governing Employment and Management of Manpower**

This group deals with the laws regulating the employment of manpower , their salaries and benefits, service rules and system of redressal of grievances and disputes. These laws are listed in Table 6.

№15 **Laws Governing to Medicolegal Aspects**

These are the laws governing the doctor-patient relationship, legal consequences of breach of contract and medicolegal aspects of negligence of duty. These laws are listed in Table 7.

№16 **Laws Governing the Safety of Patients, Public and Staff within the Hospital Premises**

These laws deal with safety of facilities and services against any accidental hazards that may endanger the lives and the liability of management for any violation. These laws are listed in Table 8.

№17 **Laws Governing Professional Training and Research**

There are the laws meant to regulate the standards of professional education and training of doctors, nurses, technician and controlling research activities. These laws are listed in Table 9.

№18 **Laws Governing the Business Aspects**

Some rules are applicable to hospital in relation to its business aspects. These are listed in Table 10.

**№19 Licences/Certifications Required for Hospitals**

A hospital administrator should be aware about the licences that are essentially required and to renew them as and when required. These are as listed in Table 11.

**№20 Сonclusion**

* The health legislations are very few as compared to the size and problems in the health care sector. There is a need for having a comprehensive health care act, framed in order to gear the entire health care sector to the objectives laid down in the different policy in India. Most of the common medico legal situations arise out on noncompliance with these rules and regulations. If a hospital or doctor acquaints well with these rules and regulations and follows them sincerely, he/ she would be on the right side of the law. In a survey conducted at Mumbai, eight out of 10 doctors feel that the laws that govern the practice of healthcare in India are outdated and even higher majority feels that there are too many laws and licences that are required to keep their practice going. A survey among 297 doctors across specializations says that there are about 50 different laws that govern the practice of healthcare in India. The study conducted by Medscape India, a nonprofit trust of doctors, revealed that 78% of doctors feel that many of the laws that govern medical practice are outdated. Licences have to be procured by doctors running a hospital every year.

**№21**

**Medical profession is the noblest profession .** Article 21 of the constitution guarantees protection of life and liberty to every citizens as well as non-citizens . Every individual has a right to healthcare and medical assistance. The state has a constitutional obligation to provide health facilities. A patient's right to life requires a government and other hospital to provide timely medical treatment to the patient

Unfortunately, In recent era, there has been an increase in the medico legal cases and hence it is important for doctors to have a clear idea of different medico legal terms and legal aspects of practice of medicine. Knowledge of forensic medicine is important when the doctor has to give evidence in a court of law. Every doctor is required to have a basic knowledge about medico legal cases and legal provisions. In India, many a times, autopsies are conducted by medical officer in government service without forensic specialization. No matter what is the level of specialization, knowledge of basic forensic working terminology broadens perspectives in practice.

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**№ 22**

With the awareness in the society and the people in general gathering consciousness about their rights, measures for damages in tort, civil suits and criminal proceedings are on the augment. Not only civil suits are filed, the accessibility of a medium for grievance redressal under the Consumer Protection Act, 1986 (CPA), having jurisdiction to hear complaints against medical professionals for 'deficiency in service', has given rise to a large number of complaints against doctors, being filed by the persons feeling aggrieved. The criminal complaints are being filed against doctors alleging commission of offences punishable under Sec. 304A or Sections 336/337/338 of the Indian Penal Code, 1860 (IPC) alleging rashness or negligence on the part of the doctors resulting in loss of life or injury of varying degree to the patient. This has given rise to a situation of great distrust and fear among the medical profession and a legal assurance, ensuring protection from unnecessary and arbitrary complaints, is the need of the hour. The liability of medical professionals must be clearly demarcated so that they can perform their benevolent duties without any fear of legal sword. At the same time, justice must be done to the victims of medical negligence and a punitive sting must be adopted in deserving cases. This is more so when the most sacrosanct right to life or personal liberty is at stake.

**№23 Medical negligence**

 is the most common act leading to liability.

Medical negligence or malpractice can be defined as "Doing something which a prudent and reasonable man would not do, or omission to do something which a reasonable man would do" or in other terms, it can also be defined as "Want of reasonable degree of care and skill or will full negligence, on the part of a medical practitioner in the treatment of a patient with whom a relationship of professional attendant is established, so as to lead to his bodily injury or the loss of his life."

Medical negligence is not very uncommon. Patients may suffer due to a negligent act of either the treating doctor alone or due to the careless act of his supporting staff. Summation of these two acts usually creates a greater problem. However, error or carelessness on the part of the doctor or supporting staff leading to the death of a patient cannot be simply excused as human error. Every country has their own laws to restrain the negligent acts of doctors, and our country India is no exception. In India, medical negligence is chiefly classified as civil and criminal negligence.

Civil negligence is a form of negligence in which a patient brings an action for damages in a civil court against his medical attendant, who owned him a duty in tort of care if he had suffered an injury in consequence of negligence or unskilled treatment. [[3]](http://www.jfsmonline.com/article.asp?issn=2349-5014;year=2016;volume=2;issue=3;spage=167;epage=170;aulast=Tamuli" \l "ref3)

The question of criminal negligence may arise - when a doctor shows gross absence of skill or care during treatment, resulting in serious injury or death of the patient, by the acts of omission or commission.

**№24**

**Negligence arises if the following things are satisfied:**

* Duty - Existence of a duty of care by the doctor
* Dereliction *-* The physician must conform to the standard of a "prudent physician" under similar circumstances
* Direct causation *-* Failure to exercise a duty of care must lead to damage
* Damage *-* The damage should be of a type that would have been foreseen by a reasonable physician.

Professional negligence of doctors leading to the death of a patient is punishable in India under Section 304-A of the Indian Penal Code. According to this section, "Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to 2 years, or with fine, or with both."

The earliest reported case of medical malpractice was Stratton v. Swanlond, decided in 1374; and since then various doctors are being sued for their negligent acts.

**№25**

**What is the standard of a "prudent physician”?**

The highest degree of skill or knowledge cannot be expected from every medical practitioner. A medical practitioner is required to possess the reasonable medical knowledge, and to exercise reasonable skill and care in the treatment of his/her patients. A doctor must therefore merely follow the prevalent standard procedures and methods of diagnosis and treatment. No doctor can possess all currently available medical knowledge, nor he/she is expected to apply all known diagnostic and therapeutic techniques. One cannot compare the skills of a House Surgeon to a Consultant's, but at the same time, the former is expected to provide a standard level of medical care and competence.

**№26**

**CAUSATION**

**№27**

**CONCLUSION**

* •THERE ARE 4 MAJOR ELEMENTS TO ESTABLISHING BOTH NEGLIGENCE AND LIABILITY
* •THERE IS MORE TO THE DUTY OF CARE THAN SIMPLY PROVIDING SKILFUL
* TREATMENT.
* •INFORMED CONSENT IS AN INTEGRAL COMPONENT OF THE OVERARCHING AND SINGLE DUTY OF CARE
* •CAUSATION RELIES ON THE ‘BUT FOR’ TEST
* •THE IPP REPORT LED TO THE CIVIL LIABILITY ACT(S) TO REDRESS THE ISSUES RE THE
* INDEMNITY CRISIS THAT FOLLOWED NUMEROUS COURT DECISIONS

**№28**

A lot of studies in different countries found that 66 per cent of complaints of medical negligence arise following poor or improper communication. The majority of complaints received by consumer associations in India are following such a communication breakdown between doctor and patient.

Improving medical graduates’ communication skills should form the basis of better informed consent.

**Informed consent is generally agreement** to do something or to allow something to happen only after all the relevant facts are disclosed. Informed consent often refers to consent to a medical procedure after the patient has been made aware of all the risks and consequences. Medical professionals commonly have patients sign informed consent forms to limit their liability if the patient later sues them based upon the outcome of the procedure.

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**ELEMENTS OF INFORMED CONSENT**

**True and informed consent**

Courts in India and other Commonwealth countries have long differentiated between true and informed consent. The concept of true consent was enunciated by British courts in Sidway v Board of Governers of the Royal Bethleham Hospital ( 1985) 2 WLR 840. A patient operated upon for back pain suffered paralysis due to spinal cord injury and sued the hospital and surgeon for not informing her of the risk before surgery. The court held that the risk was agreed to be less than one per cent and since there was a responsible body of medical opinion who would have informed the patient in similar terms as those used by the surgeon, the latter was not negligent.

In Blythe v Bloomsbury Health Authority (1993) 4 Med L. Rev. 15 1, the patient complained that the doctor had not disclosed all the risks of Depo Provera. The court held that the doctor is not obliged to explain all possible risks of a treatment in responding to a general inquiry from the patient. As in Sidway, the courts held that the general test of medical negligence — as explained in Hunter v Hanley by Lord President Clyde and later in Bolam v Friern Hospital by Macnair J (1957) — would apply to the legal question about consent.

The Indian courts have followed the same principle over the years. This is evident from L. B. Joshi v T. R. Godbole SC AIR pg 183- 187 and Ram Bhiharital v Dr. Srivatsava AIR I985 MP pg I57- 158. However. American and Canadian courts have taken a more liberal ‘patient oriented’ view compared to the ‘doctor oriented’ approach of British and Indian courts. In Canterbury v Spence (1972) 464 F( sd) 772 the court gave more importance to the ‘reasonable’ patient than to the ‘reasonable’ doctor. In this case the patient had suffered temporary paralysis following surgery for back pain. The court held that all possible risks should be explained to the patient.

In fact in Hatcher v Black, Lord Denning cautioned British courts against the dangers of following the American concept of informed consent. In this case a singer was operated for a thyroid nodule and suffered a temporary change in voice. She sued the doctor for non-disclosure of all the facts. In Arato v Aveon (1994) 6 Med L Rev 230, the Supreme Court of California held that the concept of informed consent required disclosure of all material facts.

Today, courts in some commonwealth countries have started accepting the American concept of informed consent. In Roger v Whitaker (1992), an Australian court held the doctor guilty for not disclosing the risk of symphathetic opthalmitis in the normal eye after surgery on a diseased eye.

Can a doctor conduct a procedure or operate in the absence of consent in the best interests of the patient? Again on this point there is diversity of opinion between American and Canadian courts on the one hand and British and Indian courts on the other. In the Canadian case of Malette v Shulman (I991) 2 Med L. Rev 162., a road accident victim required a blood transfusion. The doctors were informed that her belongings contained a Jehovah ‘s Witness card requesting that no blood products be used in her treatment. However, in view of the patient’s deteriorating condition, the doctor went ahead with the blood transfusion. Thc Ontario Court of Appeal held that the doctor was guilty of trespass. In Thor v Supreme Court ( 1994) Med L Rev 220 the Supreme Court of California held that a prisoner who was quadriplegic but mentally competent cannot be kept by force on a life support system.

**№ 30 Thank you for your attention**

Reference list

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